

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

JM POLYMERS, LLC, a Michigan limited  
liability company,

Plaintiff,

vs.

Case No. 2013-3899-CK

SPARTAN POLYMERS, LLC, a Michigan  
limited liability company and MICHAEL  
A. KIRTLEY,

Defendants.

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OPINION AND ORDER

Defendants have filed a motion to clarify that the Court's December 2, 2013 preliminary injunction and constructive trust was dissolved as of March 3, 2014. Plaintiff has filed a response and requests that the motion be denied.

*Facts and Procedural Background*

Defendant Spartan Polymers, LLC ("Defendant Spartan") is a company owned and operated by Defendant Michael A. Kirtley ("Defendant Kirtley"). Defendant Spartan is a manufacturer's sales representative in the plastic and resin industry. On or around September 30, 2004, Plaintiff entered into a manufacturer's representative agreement with Defendant Spartan whereby Defendant Spartan agreed to act as Plaintiff's exclusive sales representative for 27 specific customer accounts (the "Agreement"). Defendant Spartan, through Defendant Kirtley's action, has since repeatedly breached the Agreement.

On September 27, 2013 Plaintiff filed its verified complaint and motion for a temporary restraining order. In its complaint, Plaintiff asserts claims against Defendants for: Count I-

Breach of Contract, Count II- Breach of Fiduciary Duty, Count III- Tortious Interference with Contractual and Business Relations, Count IV- Violation of Michigan Uniform Trade Secrets Act (MUTSA), Count V- Attorneys' Fees as Authorized under the Michigan Uniform Trade Secrets Act, and Count VI- Civil Conspiracy.

On September 27, 2013, the Court entered a temporary restraining order ("TRO"). On October 3, 2013, Defendants filed a motion to dissolve the TRO. On October 7, 2013, the Court granted Defendants' motion to dissolve the TRO and set a date for an evidentiary hearing in connection with Plaintiff's motion for a preliminary injunction. On October 17<sup>th</sup> and 28<sup>th</sup> 2013, the Court held an evidentiary hearing in connection with the motion for preliminary injunction.

On November 12, 2013, Defendants filed their motion for summary disposition in lieu of filing an answer. On November 26, 2013, Plaintiff filed its response and cross motion for summary disposition.

On December 2, 2013, the Court granted Plaintiff's motion for a preliminary injunction and imposed a constructive trust. On December 11, 2013, Defendants filed their reply in response to Plaintiff's response to their motion for summary disposition and motion for partial summary disposition. On December 16, 2013, the Court held a hearing in connection with the parties' first motions for summary disposition. At the conclusion of the hearing, the Court took the motions under advisement.

On January 14, 2014, Defendants filed their second summary disposition motion. On January 21, 2014, Plaintiff filed its response to the motion and motion for partial summary disposition in its favor. On February 3, 2014, the Court held a hearing in connection with the second set of summary disposition motions and took the matters under advisement.

On February 18, 2014, the Court issued its Opinion and Order addressing the motions for summary disposition. Specifically, the Court held:

“Defendants’ November 12, 2013 motion for summary disposition is GRANTED, IN PART and DENIED, IN PART. Further, Plaintiff’s November 26, 2013 cross-motion for summary disposition is GRANTED, IN PART and DENIED, IN PART. Specifically:

- Defendants’ motion is DENIED to the extent that they seek summary disposition of Plaintiff’s breach of contract claims as to Defendant Spartan. Defendants’ motion is GRANTED with respect to Plaintiff’s breach of contract claims as to Defendant Kirtley. Further, Plaintiff is GRANTED summary disposition of its breach of contract claims as to Defendant Spartan;
- Defendants’ motion for summary disposition of Plaintiff’s breach of fiduciary duty claims is GRANTED;
- The parties’ motions for summary disposition of Plaintiff’s tortious interference claims are DENIED WITHOUT PREJUDICE to the extent they are brought pursuant to MCR 2.116(C)(10). Defendants’ motion is DENIED to the extent it is brought pursuant to MCR 2.116(C)(7) and/or (8).
- Defendants’ motion for summary disposition of Plaintiff’s civil conspiracy claims is GRANTED; and
- The parties’ motions for summary disposition of Plaintiff’s Michigan Uniform Trade Secrets Act are DENIED WITHOUT PREJUDICE. Defendant’s motion is DENIED to the extent it is brought pursuant to MCR 2.116(C)(7) and/or (8).

With respect to the parties’ second motions for partial summary disposition, for the reasons discussed above, Defendants’ motion is GRANTED and Plaintiff’s motion is DENIED. Specifically, the Court finds that the Agreement was terminated with an effective date of March 3, 2014.”

On March 26, 2014, Defendants filed their instant motion for clarification. In their motion, Defendants request that the Court enter an order dissolving the preliminary injunction and constructive trust as of March 3, 2014.

#### *Analysis*

With respect to the preliminary injunction, the injunction was based on the Court’s finding that Defendants had not terminated the Agreement and had breached the Agreement by

unlawfully competing with Plaintiff. The injunction operated to bar Defendants from engaging in activities which would amount to a breach of the Agreement. However, the Court has since held that the Agreement was terminated, with an effective date of March 3, 2014. Accordingly, the activities the preliminary injunction barred Defendants from engaging in would no longer violate the Agreement as of March 3, 2014. Were the Court to continue the preliminary injunction it would in effect extend the Agreement beyond the date it was terminated. While Plaintiff has cited authority which provides the Court with discretion to extend the terms of a non-compete agreement beyond the term set forth in the contract, the Court is convinced that doing so is inappropriate in this case where the fruits of Defendants' unlawful actions are being held in a constructive trust.

In addition to issuing the preliminary injunction, on December 2, 2013 the Court also ordered that "all funds received by Defendants in connection with any of the 27 accounts listed in Appendix A of the Agreement since July 11, 2008 and going forward shall be held in constructive trust until further order of this Court." (December 2, 2013 Opinion and Order.) While Defendants are correct that the Agreement terminated on March 3, 2014, it is unclear what funds that they received after that date, and will receive in the future, are the result of activities that violated the Agreement and/or the preliminary injunction rather than as the result of permissible actions taken since March 3, 2014. Accordingly, the Court is convinced that all funds received by Defendants in connection with any of the 27 accounts listed in Appendix A of the Agreement since July 11, 2008 and going forward should remain in/be placed in the constructive trust until such time as the Court is able to determine what funds are the result of Defendants' unlawful conduct and should be awarded to Plaintiff as damages. Consequently, Defendants' request to dissolve the constructive trust must be denied.

*Conclusion*

For the reasons set forth above, Defendants' motion to clarify is GRANTED, IN PART, and DENIED, IN PART. The December 2, 2013 preliminary injunction is DISSOLVED. The December 2, 2013 constructive trust REMAINS IN EFFECT. Pursuant to MCR 2.602(A)(3), this Opinion and Order neither resolves the last pending claim nor closes this case.

IT IS SO ORDERED.

/s/ John C. Foster  
JOHN C. FOSTER, Circuit Judge

Dated: April 17, 2014

JCF/sr

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